

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, and 1248.5 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 674, as introduced, Negrete McLeod. Healing arts: outpatient settings.

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status on a specified name tag. However, existing law exempts from this requirement a health care practitioner, in a practice or office, whose license is prominently displayed.

This bill would delete that exemption and would instead authorize a health care practitioner, in a practice or office, to disclose his or her name and his or her type of license verbally.

(3) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by July 1, 2010, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(4) Existing law requires the board to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined, and assisted reproduction technology treatments.

(6) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

(7) Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

(8) Existing law authorizes the Medical Board of California as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements, and the bill would require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

(9) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 651 of the Business and Professions Code
- 2 is amended to read:
- 3 651. (a) It is unlawful for any person licensed under this
- 4 division or under any initiative act referred to in this division to
- 5 disseminate or cause to be disseminated any form of public

1 communication containing a false, fraudulent, misleading, or
2 deceptive statement, claim, or image for the purpose of or likely
3 to induce, directly or indirectly, the rendering of professional
4 services or furnishing of products in connection with the
5 professional practice or business for which he or she is licensed.
6 A “public communication” as used in this section includes, but is
7 not limited to, communication by means of mail, television, radio,
8 motion picture, newspaper, book, list or directory of healing arts
9 practitioners, Internet, or other electronic communication.

10 (b) A false, fraudulent, misleading, or deceptive statement,
11 claim, or image includes a statement or claim that does any of the
12 following:

13 (1) Contains a misrepresentation of fact.

14 (2) Is likely to mislead or deceive because of a failure to disclose
15 material facts.

16 (3) (A) Is intended or is likely to create false or unjustified
17 expectations of favorable results, including the use of any
18 photograph or other image that does not accurately depict the
19 results of the procedure being advertised or that has been altered
20 in any manner from the image of the actual subject depicted in the
21 photograph or image.

22 (B) Use of any photograph or other image of a model without
23 clearly stating in a prominent location in easily readable type the
24 fact that the photograph or image is of a model is a violation of
25 subdivision (a). For purposes of this paragraph, a model is anyone
26 other than an actual patient, who has undergone the procedure
27 being advertised, of the licensee who is advertising for his or her
28 services.

29 (C) Use of any photograph or other image of an actual patient
30 that depicts or purports to depict the results of any procedure, or
31 presents “before” and “after” views of a patient, without specifying
32 in a prominent location in easily readable type size what procedures
33 were performed on that patient is a violation of subdivision (a).
34 Any “before” and “after” views (i) shall be comparable in
35 presentation so that the results are not distorted by favorable poses,
36 lighting, or other features of presentation, and (ii) shall contain a
37 statement that the same “before” and “after” results may not occur
38 for all patients.

1 (4) Relates to fees, other than a standard consultation fee or a
2 range of fees for specific types of services, without fully and
3 specifically disclosing all variables and other material factors.

4 (5) Contains other representations or implications that in
5 reasonable probability will cause an ordinarily prudent person to
6 misunderstand or be deceived.

7 (6) Makes a claim either of professional superiority or of
8 performing services in a superior manner, unless that claim is
9 relevant to the service being performed and can be substantiated
10 with objective scientific evidence.

11 (7) Makes a scientific claim that cannot be substantiated by
12 reliable, peer reviewed, published scientific studies.

13 (8) Includes any statement, endorsement, or testimonial that is
14 likely to mislead or deceive because of a failure to disclose material
15 facts.

16 (c) Any price advertisement shall be exact, without the use of
17 phrases, including, but not limited to, “as low as,” “and up,”
18 “lowest prices,” or words or phrases of similar import. Any
19 advertisement that refers to services, or costs for services, and that
20 uses words of comparison shall be based on verifiable data
21 substantiating the comparison. Any person so advertising shall be
22 prepared to provide information sufficient to establish the accuracy
23 of that comparison. Price advertising shall not be fraudulent,
24 deceitful, or misleading, including statements or advertisements
25 of bait, discount, premiums, gifts, or any statements of a similar
26 nature. In connection with price advertising, the price for each
27 product or service shall be clearly identifiable. The price advertised
28 for products shall include charges for any related professional
29 services, including dispensing and fitting services, unless the
30 advertisement specifically and clearly indicates otherwise.

31 (d) Any person so licensed shall not compensate or give anything
32 of value to a representative of the press, radio, television, or other
33 communication medium in anticipation of, or in return for,
34 professional publicity unless the fact of compensation is made
35 known in that publicity.

36 (e) Any person so licensed may not use any professional card,
37 professional announcement card, office sign, letterhead, telephone
38 directory listing, medical list, medical directory listing, or a similar
39 professional notice or device if it includes a statement or claim

1 that is false, fraudulent, misleading, or deceptive within the
2 meaning of subdivision (b).

3 (f) Any person so licensed who violates this section is guilty of
4 a misdemeanor. A bona fide mistake of fact shall be a defense to
5 this subdivision, but only to this subdivision.

6 (g) Any violation of this section by a person so licensed shall
7 constitute good cause for revocation or suspension of his or her
8 license or other disciplinary action.

9 (h) Advertising by any person so licensed may include the
10 following:

11 (1) A statement of the name of the practitioner.

12 (2) A statement of addresses and telephone numbers of the
13 offices maintained by the practitioner.

14 (3) A statement of office hours regularly maintained by the
15 practitioner.

16 (4) A statement of languages, other than English, fluently spoken
17 by the practitioner or a person in the practitioner's office.

18 (5) (A) A statement that the practitioner is certified by a private
19 or public board or agency or a statement that the practitioner limits
20 his or her practice to specific fields.

21 (i) For the purposes of this section, a dentist licensed under
22 Chapter 4 (commencing with Section 1600) may not hold himself
23 or herself out as a specialist, or advertise membership in or
24 specialty recognition by an accrediting organization, unless the
25 practitioner has completed a specialty education program approved
26 by the American Dental Association and the Commission on Dental
27 Accreditation, is eligible for examination by a national specialty
28 board recognized by the American Dental Association, or is a
29 diplomate of a national specialty board recognized by the American
30 Dental Association.

31 (ii) A dentist licensed under Chapter 4 (commencing with
32 Section 1600) shall not represent to the public or advertise
33 accreditation either in a specialty area of practice or by a board
34 not meeting the requirements of clause (i) unless the dentist has
35 attained membership in or otherwise been credentialed by an
36 accrediting organization that is recognized by the board as a bona
37 fide organization for that area of dental practice. In order to be
38 recognized by the board as a bona fide accrediting organization
39 for a specific area of dental practice other than a specialty area of
40 dentistry authorized under clause (i), the organization shall

1 condition membership or credentialing of its members upon all of
2 the following:

3 (I) Successful completion of a formal, full-time advanced
4 education program that is affiliated with or sponsored by a
5 university based dental school and is beyond the dental degree at
6 a graduate or postgraduate level.

7 (II) Prior didactic training and clinical experience in the specific
8 area of dentistry that is greater than that of other dentists.

9 (III) Successful completion of oral and written examinations
10 based on psychometric principles.

11 (iii) Notwithstanding the requirements of clauses (i) and (ii), a
12 dentist who lacks membership in or certification, diplomate status,
13 other similar credentials, or completed advanced training approved
14 as bona fide either by an American Dental Association recognized
15 accrediting organization or by the board, may announce a practice
16 emphasis in any other area of dental practice only if the dentist
17 incorporates in capital letters or some other manner clearly
18 distinguishable from the rest of the announcement, solicitation, or
19 advertisement that he or she is a general dentist.

20 (iv) A statement of certification by a practitioner licensed under
21 Chapter 7 (commencing with Section 3000) shall only include a
22 statement that he or she is certified or eligible for certification by
23 a private or public board or parent association recognized by that
24 practitioner's licensing board.

25 (B) A physician and surgeon licensed under Chapter 5
26 (commencing with Section 2000) by the Medical Board of
27 California may include a statement that he or she limits his or her
28 practice to specific fields, but shall not include a statement that he
29 or she is certified or eligible for certification by a private or public
30 board or parent association, including, but not limited to, a
31 multidisciplinary board or association, unless that board or
32 association is (i) an American Board of Medical Specialties
33 member board, (ii) a board or association with equivalent
34 requirements approved by that physician and surgeon's licensing
35 board, or (iii) a board or association with an Accreditation Council
36 for Graduate Medical Education approved postgraduate training
37 program that provides complete training in that specialty or
38 subspecialty. A physician and surgeon licensed under Chapter 5
39 (commencing with Section 2000) by the Medical Board of
40 California who is certified by an organization other than a board

1 or association referred to in clause (i), (ii), or (iii) shall not use the
2 term “board certified” in reference to that certification, unless the
3 physician and surgeon is also licensed under Chapter 4
4 (commencing with Section 1600) and the use of the term “board
5 certified” in reference to that certification is in accordance with
6 subparagraph (A). A physician and surgeon licensed under Chapter
7 5 (commencing with Section 2000) by the Medical Board of
8 California who is certified by a board or association referred to in
9 clause (i), (ii), or (iii) shall not use the term “board certified” unless
10 the full name of the certifying board is also used and given
11 comparable prominence with the term “board certified” in the
12 statement.

13 For purposes of this subparagraph, a “multidisciplinary board
14 or association” means an educational certifying body that has a
15 psychometrically valid testing process, as determined by the
16 Medical Board of California, for certifying medical doctors and
17 other health care professionals that is based on the applicant’s
18 education, training, and experience.

19 For purposes of the term “board certified,” as used in this
20 subparagraph, the terms “board” and “association” mean an
21 organization that is an American Board of Medical Specialties
22 member board, an organization with equivalent requirements
23 approved by a physician and surgeon’s licensing board, or an
24 organization with an Accreditation Council for Graduate Medical
25 Education approved postgraduate training program that provides
26 complete training in a specialty or subspecialty.

27 The Medical Board of California shall adopt regulations to
28 establish and collect a reasonable fee from each board or
29 association applying for recognition pursuant to this subparagraph.
30 The fee shall not exceed the cost of administering this
31 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
32 Statutes of 1990, this subparagraph shall become operative July
33 1, 1993. However, an administrative agency or accrediting
34 organization may take any action contemplated by this
35 subparagraph relating to the establishment or approval of specialist
36 requirements on and after January 1, 1991.

37 (C) A doctor of podiatric medicine licensed under Chapter 5
38 (commencing with Section 2000) by the Medical Board of
39 California may include a statement that he or she is certified or
40 eligible or qualified for certification by a private or public board

1 or parent association, including, but not limited to, a
2 multidisciplinary board or association, if that board or association
3 meets one of the following requirements: (i) is approved by the
4 Council on Podiatric Medical Education, (ii) is a board or
5 association with equivalent requirements approved by the
6 California Board of Podiatric Medicine, or (iii) is a board or
7 association with the Council on Podiatric Medical Education
8 approved postgraduate training programs that provide training in
9 podiatric medicine and podiatric surgery. A doctor of podiatric
10 medicine licensed under Chapter 5 (commencing with Section
11 2000) by the Medical Board of California who is certified by a
12 board or association referred to in clause (i), (ii), or (iii) shall not
13 use the term “board certified” unless the full name of the certifying
14 board is also used and given comparable prominence with the term
15 “board certified” in the statement. A doctor of podiatric medicine
16 licensed under Chapter 5 (commencing with Section 2000) by the
17 Medical Board of California who is certified by an organization
18 other than a board or association referred to in clause (i), (ii), or
19 (iii) shall not use the term “board certified” in reference to that
20 certification.

21 For purposes of this subparagraph, a “multidisciplinary board
22 or association” means an educational certifying body that has a
23 psychometrically valid testing process, as determined by the
24 California Board of Podiatric Medicine, for certifying doctors of
25 podiatric medicine that is based on the applicant’s education,
26 training, and experience. For purposes of the term “board certified,”
27 as used in this subparagraph, the terms “board” and “association”
28 mean an organization that is a Council on Podiatric Medical
29 Education approved board, an organization with equivalent
30 requirements approved by the California Board of Podiatric
31 Medicine, or an organization with a Council on Podiatric Medical
32 Education approved postgraduate training program that provides
33 training in podiatric medicine and podiatric surgery.

34 The California Board of Podiatric Medicine shall adopt
35 regulations to establish and collect a reasonable fee from each
36 board or association applying for recognition pursuant to this
37 subparagraph, to be deposited in the State Treasury in the Podiatry
38 Fund, pursuant to Section 2499. The fee shall not exceed the cost
39 of administering this subparagraph.

- 1 (6) A statement that the practitioner provides services under a
2 specified private or public insurance plan or health care plan.
- 3 (7) A statement of names of schools and postgraduate clinical
4 training programs from which the practitioner has graduated,
5 together with the degrees received.
- 6 (8) A statement of publications authored by the practitioner.
- 7 (9) A statement of teaching positions currently or formerly held
8 by the practitioner, together with pertinent dates.
- 9 (10) A statement of his or her affiliations with hospitals or
10 clinics.
- 11 (11) A statement of the charges or fees for services or
12 commodities offered by the practitioner.
- 13 (12) A statement that the practitioner regularly accepts
14 installment payments of fees.
- 15 (13) Otherwise lawful images of a practitioner, his or her
16 physical facilities, or of a commodity to be advertised.
- 17 (14) A statement of the manufacturer, designer, style, make,
18 trade name, brand name, color, size, or type of commodities
19 advertised.
- 20 (15) An advertisement of a registered dispensing optician may
21 include statements in addition to those specified in paragraphs (1)
22 to (14), inclusive, provided that any statement shall not violate
23 subdivision (a), (b), (c), or (e) or any other section of this code.
- 24 (16) A statement, or statements, providing public health
25 information encouraging preventative or corrective care.
- 26 (17) Any other item of factual information that is not false,
27 fraudulent, misleading, or likely to deceive.
- 28 (i) (1) *Advertising by the following licensees shall include the*
29 *designations as follows:*
- 30 (A) *Advertising by a chiropractor licensed under Chapter 2*
31 *(commencing with Section 1000) shall include the designation*
32 *“DC” immediately following the chiropractor’s name.*
- 33 (B) *Advertising by a dentist licensed under Chapter 4*
34 *(commencing with Section 1600) shall include the designation*
35 *“DDS” immediately following the dentist’s name.*
- 36 (C) *Advertising by a physician and surgeon licensed under*
37 *Chapter 5 (commencing with Section 2000) shall include the*
38 *designation “MD” immediately following the physician and*
39 *surgeon’s name.*

1 (D) Advertising by an osteopathic physician and surgeon
2 certified under Article 21 (commencing with Section 2450) shall
3 include the designation “DO” immediately following the
4 osteopathic physician and surgeon’s name.

5 (E) Advertising by a podiatrist certified under Article 22
6 (commencing with Section 2460) of Chapter 5 shall include the
7 designation “DPM” immediately following the podiatrist’s name.

8 (F) Advertising by a registered nurse licensed under Chapter
9 6 (commencing with Section 2700) shall include the designation
10 “RN” immediately following the registered nurse’s name.

11 (G) Advertising by a licensed vocational nurse under Chapter
12 6.5 (commencing with Section 2840) shall include the designation
13 “LVN” immediately following the licensed vocational nurse’s
14 name.

15 (H) Advertising by a psychologist licensed under Chapter 6.6
16 (commencing with Section 2900) shall include the designation
17 “Ph.D.” immediately following the psychologist’s name.

18 (I) Advertising by an optometrist licensed under Chapter 7
19 (commencing with Section 3000) shall include the designation
20 “OD” immediately following the optometrist’s name.

21 (J) Advertising by a physician assistant licensed under Chapter
22 7.7 (commencing with Section 3500) shall include the designation
23 “PA” immediately following the physician assistant’s name.

24 (K) Advertising by a naturopathic doctor licensed under Chapter
25 8.2 (commencing with Section 3610) shall include the designation
26 “ND” immediately following the naturopathic doctor’s name.

27 (2) For purposes of this subdivision, “advertisement” includes
28 communication by means of mail, television, radio, motion picture,
29 newspaper, book, directory, Internet, or other electronic
30 communication.

31 (3) Advertisements do not include any of the following:

32 (A) A medical directory released by a health care service plan
33 or a health insurer.

34 (B) A billing statement from a health care practitioner to a
35 patient.

36 (C) An appointment reminder from a health care practitioner
37 to a patient.

38 (4) This subdivision shall not apply until January 1, 2011, to
39 any advertisement that is published annually and prior to July 1,
40 2010.

1 (5) *This subdivision shall not apply to any advertisement or*
2 *business card disseminated by a health care service plan that is*
3 *subject to the requirements of Section 1367.26 of the Health and*
4 *Safety Code.*

5 ~~(i)~~

6 (j) Each of the healing arts boards and examining committees
7 within Division 2 shall adopt appropriate regulations to enforce
8 this section in accordance with Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
10 Code.

11 Each of the healing arts boards and committees and examining
12 committees within Division 2 shall, by regulation, define those
13 efficacious services to be advertised by businesses or professions
14 under their jurisdiction for the purpose of determining whether
15 advertisements are false or misleading. Until a definition for that
16 service has been issued, no advertisement for that service shall be
17 disseminated. However, if a definition of a service has not been
18 issued by a board or committee within 120 days of receipt of a
19 request from a licensee, all those holding the license may advertise
20 the service. Those boards and committees shall adopt or modify
21 regulations defining what services may be advertised, the manner
22 in which defined services may be advertised, and restricting
23 advertising that would promote the inappropriate or excessive use
24 of health services or commodities. A board or committee shall not,
25 by regulation, unreasonably prevent truthful, nondeceptive price
26 or otherwise lawful forms of advertising of services or
27 commodities, by either outright prohibition or imposition of
28 onerous disclosure requirements. However, any member of a board
29 or committee acting in good faith in the adoption or enforcement
30 of any regulation shall be deemed to be acting as an agent of the
31 state.

32 ~~(j)~~

33 (k) The Attorney General shall commence legal proceedings in
34 the appropriate forum to enjoin advertisements disseminated or
35 about to be disseminated in violation of this section and seek other
36 appropriate relief to enforce this section. Notwithstanding any
37 other provision of law, the costs of enforcing this section to the
38 respective licensing boards or committees may be awarded against
39 any licensee found to be in violation of any provision of this
40 section. This shall not diminish the power of district attorneys,

1 county counsels, or city attorneys pursuant to existing law to seek
2 appropriate relief.

3 ~~(k)~~

4 (l) A physician and surgeon or doctor of podiatric medicine
5 licensed pursuant to Chapter 5 (commencing with Section 2000)
6 by the Medical Board of California who knowingly and
7 intentionally violates this section may be cited and assessed an
8 administrative fine not to exceed ten thousand dollars (\$10,000)
9 per event. Section 125.9 shall govern the issuance of this citation
10 and fine except that the fine limitations prescribed in paragraph
11 (3) of subdivision (b) of Section 125.9 shall not apply to a fine
12 under this subdivision.

13 SEC. 2. Section 680 of the Business and Professions Code is
14 amended to read:

15 680. (a) Except as otherwise provided in this section, a health
16 care practitioner shall disclose, while working, his or her name
17 and *the practitioner's type of license status*, as granted by this state,
18 on a name tag in at least 18-point type. ~~A health care practitioner~~
19 ~~in a practice or an office, whose license is prominently displayed,~~
20 ~~may opt to not wear a name tag. A health care practitioner in a~~
21 ~~practice or office may opt to disclose this information verbally.~~ If
22 a health care practitioner or a licensed clinical social worker is
23 working in a psychiatric setting or in a setting that is not licensed
24 by the state, the employing entity or agency shall have the
25 discretion to make an exception from the name tag requirement
26 for individual safety or therapeutic concerns. In the interest of
27 public safety and consumer awareness, it shall be unlawful for any
28 person to use the title "nurse" in reference to himself or herself
29 and in any capacity, except for an individual who is a registered
30 nurse or a licensed vocational nurse, or as otherwise provided in
31 Section 2800. Nothing in this section shall prohibit a certified nurse
32 assistant from using his or her title.

33 (b) Facilities licensed by the State Department of Social
34 Services, the State Department of Mental Health, or the State
35 Department of *Public Health Services* shall develop and implement
36 policies to ensure that health care practitioners providing care in
37 those facilities are in compliance with subdivision (a). The State
38 Department of Social Services, the State Department of Mental
39 Health, and the State Department of *Public Health Services* shall
40 verify through periodic inspections that the policies required

1 pursuant to subdivision (a) have been developed and implemented
2 by the respective licensed facilities.

3 (c) For purposes of this article, “health care practitioner” means
4 any person who engages in acts that are the subject of licensure
5 or regulation under this division or under any initiative act referred
6 to in this division.

7 SEC. 3. Section 2023.5 of the Business and Professions Code
8 is amended to read:

9 2023.5. (a) The board, in conjunction with the Board of
10 Registered Nursing, and in consultation with the Physician
11 Assistant Committee and professionals in the field, shall review
12 issues and problems surrounding the use of laser or intense light
13 pulse devices for elective cosmetic procedures by physicians and
14 surgeons, nurses, and physician assistants. The review shall include,
15 but need not be limited to, all of the following:

16 (1) The appropriate level of physician supervision needed.

17 (2) The appropriate level of training to ensure competency.

18 (3) Guidelines for standardized procedures and protocols that
19 address, at a minimum, all of the following:

20 (A) Patient selection.

21 (B) Patient education, instruction, and informed consent.

22 (C) Use of topical agents.

23 (D) Procedures to be followed in the event of complications or
24 side effects from the treatment.

25 (E) Procedures governing emergency and urgent care situations.

26 (b) On or before January 1, 2009, the board and the Board of
27 Registered Nursing shall promulgate regulations to implement
28 changes determined to be necessary with regard to the use of laser
29 or intense pulse light devices for elective cosmetic procedures by
30 physicians and surgeons, nurses, and physician assistants.

31 *(c) On or before July 1, 2010, the board shall adopt regulations*
32 *regarding the appropriate level of physician availability needed*
33 *within clinics or other settings using laser or intense pulse light*
34 *devices for elective cosmetic procedures. However, these*
35 *regulations shall not apply to laser or intense pulse light devices*
36 *approved by the federal Food and Drug Administration for*
37 *over-the-counter use by a health care practitioner or by an*
38 *unlicensed person on himself or herself.*

39 SEC. 4. Section 2027.5 is added to the Business and Professions
40 Code, to read:

1 2027.5. The board shall post on its Internet Web site an
2 easy-to-understand factsheet to educate the public and about
3 cosmetic surgery and procedures, including their risks. Included
4 with the factsheet shall be a comprehensive list of questions for
5 patients to ask their physician and surgeon regarding cosmetic
6 surgery.

7 SEC. 5. Section 1248 of the Health and Safety Code is amended
8 to read:

9 1248. For purposes of this chapter, the following definitions
10 shall apply:

11 (a) “Division” means the ~~Division of Licensing of the Medical~~
12 Board of California. *All references in this chapter to the division,*
13 *the Division of Licensing of the Medical Board of California, or*
14 *the Division of Medical Quality shall be deemed to refer to the*
15 *Medical Board of California pursuant to Section 2002 of the*
16 *Business and Professions Code.*

17 ~~(b) “Division of Medical Quality” means the Division of~~
18 ~~Medical Quality of the Medical Board of California.~~

19 ~~(c)~~

20 (b) “Outpatient setting” means any facility, clinic, unlicensed
21 clinic, center, office, or other setting that is not part of a general
22 acute care facility, as defined in Section 1250, and where
23 anesthesia, except local anesthesia or peripheral nerve blocks, or
24 both, is used in compliance with the community standard of
25 practice, in doses that, when administered have the probability of
26 placing a patient at risk for loss of the patient’s life-preserving
27 protective reflexes. *“Outpatient setting” also means facilities that*
28 *offer in vitro fertilization, as defined in subdivision (b) of Section*
29 *1374.55, or facilities that offer assisted reproduction technology*
30 *treatments.*

31 “Outpatient setting” does not include, among other settings, any
32 setting where anxiolytics and analgesics are administered, when
33 done so in compliance with the community standard of practice,
34 in doses that do not have the probability of placing the patient at
35 risk for loss of the patient’s life-preserving protective reflexes.

36 ~~(d)~~

37 (c) “Accreditation agency” means a public or private
38 organization that is approved to issue certificates of accreditation
39 to outpatient settings by the ~~division~~ board pursuant to Sections
40 1248.15 and 1248.4.

SEC. 6. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) *Submission* for approval by an accrediting agency of a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) *Submission for approval by an accrediting agency at the time of accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.*

~~(F)~~

1 (F) All physicians and surgeons transferring patients from an
2 outpatient setting shall agree to cooperate with the medical staff
3 peer review process on the transferred case, the results of which
4 shall be referred back to the outpatient setting, if deemed
5 appropriate by the medical staff peer review committee. If the
6 medical staff of the acute care facility determines that inappropriate
7 care was delivered at the outpatient setting, the acute care facility's
8 peer review outcome shall be reported, as appropriate, to the
9 accrediting body, the Health Care Financing Administration, the
10 State Department of *Public Health Services*, and the appropriate
11 licensing authority.

12 (3) The outpatient setting shall permit surgery by a dentist acting
13 within his or her scope of practice under Chapter 4 (commencing
14 with Section 1600) of *Division 2 of the Business and Professions*
15 *Code* or physician and surgeon, osteopathic physician and surgeon,
16 or podiatrist acting within his or her scope of practice under
17 Chapter 5 (commencing with Section 2000) of *Division 2 of the*
18 *Business and Professions Code* or the Osteopathic Initiative Act.
19 The outpatient setting may, in its discretion, permit anesthesia
20 service by a certified registered nurse anesthetist acting within his
21 or her scope of practice under Article 7 (commencing with Section
22 2825) of Chapter 6 of *Division 2 of the Business and Professions*
23 *Code*.

24 (4) Outpatient settings shall have a system for maintaining
25 clinical records.

26 (5) Outpatient settings shall have a system for patient care and
27 monitoring procedures.

28 (6) (A) Outpatient settings shall have a system for quality
29 assessment and improvement.

30 (B) Members of the medical staff and other practitioners who
31 are granted clinical privileges shall be professionally qualified and
32 appropriately credentialed for the performance of privileges
33 granted. The outpatient setting shall grant privileges in accordance
34 with recommendations from qualified health professionals, and
35 credentialing standards established by the outpatient setting.

36 (C) Clinical privileges shall be periodically reappraised by the
37 outpatient setting. The scope of procedures performed in the
38 outpatient setting shall be periodically reviewed and amended as
39 appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division~~ board. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ board to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division~~ board, and no standard included in any certification program of any accreditation agency approved by the ~~division~~ board, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards

1 established by the outpatient setting in compliance with this
2 chapter. Privileges may not be arbitrarily restricted based on
3 category of licensure.

4 SEC. 7. Section 1248.2 of the Health and Safety Code is
5 amended to read:

6 1248.2. (a) Any outpatient setting may apply to an
7 accreditation agency for a certificate of accreditation. Accreditation
8 shall be issued by the accreditation agency solely on the basis of
9 compliance with its standards as approved by the ~~division board~~
10 under this chapter.

11 (b) The ~~division board~~ shall obtain and maintain a list of all
12 accredited, certified, and licensed outpatient settings from the
13 information provided by the accreditation, certification, and
14 licensing agencies approved by the ~~division board~~, and shall notify
15 the public, ~~upon inquiry~~, whether a setting is accredited, certified,
16 or licensed, or whether the setting's accreditation, certification, or
17 license has been revoked, *suspended, or placed on probation, or*
18 *the setting has received a reprimand by the accreditation agency.*

19 SEC. 8. Section 1248.25 of the Health and Safety Code is
20 amended to read:

21 1248.25. If an outpatient setting does not meet the standards
22 approved by the ~~division board~~, accreditation shall be denied by
23 the accreditation agency, which shall provide the outpatient setting
24 notification of the reasons for the denial. An outpatient setting may
25 reapply for accreditation at any time after receiving notification
26 of the denial. *The accrediting agency shall immediately report to*
27 *the board if the outpatient setting's certificate for accreditation*
28 *has been denied.*

29 SEC. 9. Section 1248.35 of the Health and Safety Code is
30 amended to read:

31 1248.35. (a) ~~The Division of Medical Quality~~ *Every outpatient*
32 *setting which is accredited shall be periodically inspected by the*
33 *Medical Board of California or an the accreditation agency may.*
34 *The frequency of inspection shall depend upon reasonable prior*
35 *notice the type and presentation complexity of proper identification,*
36 *the outpatient setting to be inspected. Inspections shall be*
37 *conducted no less often than once every three years and as often*
38 *as necessary to ensure the quality of care provided. The Medical*
39 *Board of California or the accreditation agency may enter and*
40 *inspect any outpatient setting that is accredited by an accreditation*

1 agency at any reasonable time to ensure compliance with, or
2 investigate an alleged violation of, any standard of the accreditation
3 agency or any provision of this chapter.

4 (b) If an accreditation agency determines, as a result of its
5 inspection, that an outpatient setting is not in compliance with the
6 standards under which it was approved, the accreditation agency
7 may do any of the following:

8 (1) Issue a reprimand.

9 (2) Place the outpatient setting on probation, during which time
10 the setting shall successfully institute and complete a plan of
11 correction, approved by the ~~division~~ board or the accreditation
12 agency, to correct the deficiencies.

13 (3) Suspend or revoke the outpatient setting's certification of
14 accreditation.

15 (c) Except as is otherwise provided in this subdivision, before
16 suspending or revoking a certificate of accreditation under this
17 chapter, the accreditation agency shall provide the outpatient setting
18 with notice of any deficiencies and *the outpatient setting shall*
19 *agree with the accreditation agency on a plan of correction that*
20 *shall give the outpatient setting* reasonable time to supply
21 information demonstrating compliance with the standards of the
22 accreditation agency in compliance with this chapter, as well as
23 the opportunity for a hearing on the matter upon the request of the
24 outpatient center. *During that allotted time, a list of deficiencies*
25 *and the plan of correction shall be conspicuously posted in a clinic*
26 *location accessible to public view.* The accreditation agency may
27 immediately suspend the certificate of accreditation before
28 providing notice and an opportunity to be heard, but only when
29 failure to take the action may result in imminent danger to the
30 health of an individual. In such cases, the accreditation agency
31 shall provide subsequent notice and an opportunity to be heard.

32 (d) If the ~~division~~ board determines that deficiencies found
33 during an inspection suggests that the accreditation agency does
34 not comply with the standards approved by the ~~division~~ board, the
35 ~~division~~ board may conduct inspections, as described in this
36 section, of other settings accredited by the accreditation agency to
37 determine if the agency is accrediting settings in accordance with
38 Section 1248.15.

39 (e) *Reports on the results of each inspection shall be kept on*
40 *file with the board or the accrediting agency along with the plan*

1 *of correction and the outpatient setting comments. The inspection*
2 *report may include a recommendation for reinspection. All*
3 *inspection reports, lists of deficiencies, and plans of correction*
4 *shall be public records open to public inspection.*

5 *(f) The accrediting agency shall immediately report to the board*
6 *if the outpatient setting has been issued a reprimand or if the*
7 *outpatient setting's certification of accreditation has been*
8 *suspended or revoked or if the outpatient setting has been placed*
9 *on probation.*

10 SEC. 10. Section 1248.5 of the Health and Safety Code is
11 amended to read:

12 1248.5. ~~The division may~~ *board shall* evaluate the performance
13 of an approved accreditation agency no less than every three years,
14 or in response to complaints against an agency, or complaints
15 against one or more outpatient settings accreditation by an agency
16 that indicates noncompliance by the agency with the standards
17 approved by the ~~division~~ *board*.

18 SEC. 11. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.